

Michigan, or his or her designated representative.

**DATES:** The regulations in 33 CFR 165.T09-0166 will be enforced from 4 p.m. on October 19, 2010 to 12 p.m. on October 20, 2010 and from 4 p.m. on October 20, 2010 to 10 a.m. on October 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216-902-6045, e-mail address [Timothy.M.Cummins@uscg.mil](mailto:Timothy.M.Cummins@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL listed in 33 CFR 165.T09-0166(a)(2), on all waters of the Chicago Sanitary and Ship Canal between Mile Marker 291.0 and Mile Marker 296.1 from 4 p.m. on October 19, 2010 to 12 p.m. on October 20, 2010 and then again from 4 p.m. on October 20, 2010 to 10 a.m. on October 21, 2010.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the IDNR fish sampling effort poses risks to life and property. Specifically, there will be congested waterways and the extensive placement of nets throughout the portion of the Chicago Sanitary and Ship Canal between Mile Marker 291.0 and Mile Marker 296.1. The combination of vessel traffic, nets, and electric current in the water makes the control of vessels through the impacted portion of the Chicago Sanitary and Ship Canal necessary to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up, or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.T09-0166 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include but are not limited to Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and e-mail notifications.

Dated: October 5, 2010.

**L. Barndt,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.*

[FR Doc. 2010-26213 Filed 10-18-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 2

**RIN 1024-AD91**

#### General Regulation: National Park System

**AGENCY:** National Park Service, Interior.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The National Park Service (NPS) is issuing this interim general rule governing demonstrations and the sale and distribution of printed matter for most of the National Park System as well as request for comments. This rule revises the definition of what constitutes a demonstration and exempts individuals and small groups from the requirement to obtain a permit for demonstrations and the sale or distribution of printed matter, consistent with the decisions in the *Boardley v. Department of the Interior* litigation. This rule also refines how applications are processed and prohibits the harassment of visitors and obstruction of public passageways.

**DATES:**

*Effective Date:* October 19, 2010.

*Comment Date:* Comments must be received by December 20, 2010.

**ADDRESSES:** You may submit comments, identified by the number 1024-ADXX, by any of the following methods:

—*Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.  
—*Mail:* National Park Service, Attn. Special Park Uses Program Manager, 1849 C St., NW., MS-3122, Washington, DC 20240.

All submissions received must include the agency name and RIN 1024-ADXX. For additional information see “Public Participation” under **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** Lee Dickinson, Special Park Use Program Manager, 1849 C St., NW., Washington, DC., 20240 (202) 208-4206.

**SUPPLEMENTARY INFORMATION:**

**Background**

The NPS Organic Act, 16 U.S.C. 1, created the NPS to “promote and regulate the use of Federal areas known

as national parks,” and charged it with the following “fundamental purpose”: “to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for future generations.” In 1978, Congress enacted 16 U.S.C. 1a-1, which provides that all of the units of the National Park System

\* \* \* though distinct in character, are united through their inter-related purposes and resources into one national park system as cumulative expressions of a single national heritage; that, individually and collectively, these areas derive increased national dignity and recognition of their superlative environmental quality through their inclusion jointly with each other in one national park system preserved and managed for the benefit and inspiration of all the people of the United States. \* \* \*

Congress also empowered the Secretary of the Interior, at 16 U.S.C. 3, to

\* \* \* make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks.

The National Park System currently consists of 392 park units. It covers more than 84 million acres and is located in every state (except Delaware), the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. This area equals 131,753 square miles, which is larger than the total areas of the states of Pennsylvania, Tennessee and Virginia. These park units are located in a wide range of environments as diverse as the United States itself. They include urban areas, from the Town of Harpers Ferry to New York City; oceans, lakes, swamps and rivers; mountainous areas that go up in height to the 20,320-foot Mount McKinley; caves, canyons, cliffs, and karst; deserts, forests, and grasslands; and areas throughout the Nation’s reach, from Buck Island Reef National Monument in the Caribbean, to War in the Pacific National Historical Park in Guam, to Gates of the Arctic National Park and Preserve above the Arctic Circle.

The size of these park units also varies tremendously. The largest National Park is Wrangell-St. Elias National Park and National Preserve, Alaska, at 13.2 million acres. Yellowstone National Park is 2,219,790 acres. The smallest unit of the National Park System is Thaddeus Kosciuszko National Memorial, Pennsylvania, at 0.02 acres. As detailed in the *NPS*

*Overview* (October, 2009), the National Park System is also habitat for 378 threatened or endangered species, has more than 100 million items in museum collections, has 1.5 million archaeological sites, and has 27,000 historic and prehistoric structures. The National Park System also has a physical infrastructure that includes 21,000 buildings, 17,000 miles of trails, 10,000 miles of paved and unpaved roads, 5,000 housing units, 22,000 campgrounds and picnic areas, 1,600 waste water treatment systems, and 1,400 water treatment systems.

About one-third of the units of the National Park System—such as Great Smoky Mountains National Park, Tennessee; Grand Canyon National Park, Arizona; Everglades National Park, Florida; and Hawaii Volcanoes National Parks, Hawaii—preserve nature's many and varied gifts to the Nation. The other two-thirds of the units of the National Park System recognize benchmarks of human history in America. These units protect elements of great native cultures, far older than European exploration and settlement; present battle sites from the Revolutionary and Civil Wars—including the key surrender fields of both great conflicts; embrace Thomas Edison's New Jersey laboratories where he and his staff led a technological revolution more dramatic even than the coming of the computer age; and more. These historical park units reflect the development of both art and industry in America, along with landmarks of social and political change.

As a broader understanding of history took hold, the National Park System eventually grew to include the historic homes of civil rights, political, and corporate leaders, and the lands of the poor, struggling to build lives for themselves on a Nebraska homestead claim or in an urban community. It now embraces the birthplace, church, and grave of Dr. Martin Luther King at Martin Luther King, Jr. National Historical Site, Georgia; the birth of jazz at New Orleans Jazz National Historical Park, Louisiana; the flowering of a literary giant at the Eugene O'Neill National Historical Site, California; and the artistic grace of a great sculptor's studios at Saint-Gaudens National Historical Site, New Hampshire. Because of the lessons they help us remember, the National Park System also includes the Japanese American World War II internment camp in the desert at Manzanar National Historical Site, California, as well as Andersonville National Historical Site, Georgia, one of the very bleakest of the Civil War prison sites.

Very large numbers of people annually visit the National Park System. According to the National Park Service's 2009 *Statistical Abstract*, there were 285,578,941 visits to the National Park System in 2009. The National Park System offers visitors not only visual, educational, and recreational experiences but also inspirational, contemplative, and spiritual experiences. For neighboring Native Americans, Rainbow Bridge National Monument, Utah, is considered a sacred religious site, such that the Park Service asks visitors to respect these long-standing beliefs by volunteering not to approach or walk under the bridge.

Equally important, the National Park System has traditionally offered visitors the opportunity to engage in demonstration activity and the sale and distribution of printed matter. In that regard, the NPS general regulations found at 36 CFR 2.51 and 2.52, applicable for all parks not subject to 36 CFR 7.96(g), have governed such activities since 1983. Enacted

\* \* \* to protect the natural and cultural resources of the parks and to protect visitors and property within the parks, [these NPS general regulations] intended effect \* \* \* is to impose on those activities that involve First Amendment consideration only those narrow restrictions that are necessary to protect park resources and to ensure the management of park areas for public enjoyment. (48 FR 30252, 30272)

Among other things, these two NPS regulations required the submission of a permit application for public assemblies and meetings and the sale and distribution of printed materials, established criteria for how parks designate areas available for such activities, established criteria for how the NPS will act on an application including that it do so "without unreasonable delay," provided that parks may impose permit conditions reasonably consistent with protection and use of the park area, imposed a limitation on how long a permit may be issued (although allowing extensions), and provided the grounds for revoking a permit.

On August 6, 2010, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision in *Boardley v. Department of the Interior*, No. 09-5176, 2010 U.S. App. LEXIS 16302 (DC Cir. August 6, 2010), which stemmed from a demonstration and leaflet distribution incident at Mount Rushmore National Memorial for which a permit was issued by NPS. Recognizing that no party had proposed to sever the regulations and leave part of them intact, the Court of Appeals held the regulations unconstitutional in their entirety, based

on the system-wide lack of an exception from the permit requirement for individual and small group activity in the NPS-designated free speech areas. In an earlier decision, the U.S. District Court for the District of Columbia had found fault with the regulatory definition of a demonstration. Consistent with these judicial decisions, and in order to avoid a regulatory vacuum that could impact the NPS conservation mandate and the use of park areas by the public, the NPS is issuing this interim general rule governing demonstrations and the sale and distribution of printed matter for most of the National Park System. Certain parks in the NPS's National Capital Region are instead subject to special regulations found at 36 CFR 7.96, which were not at issue in the *Boardley* litigation.

While retaining the park superintendent's ability to designate available areas as well as the permit requirement for large groups, the NPS regulatory changes include the following: narrowing the definition of what constitutes a demonstration; creating a small group permit exception; detailing how the NPS is to address small non-permit groups that seek the same park area; refining how applications are to be processed, including that the NPS is to respond within ten days after receipt of a complete and fully executed application; and prohibiting the harassment of visitors by physical touch or by obstruction of building entranceways, sidewalks, and other public passageways. Consistent with evolving First Amendment jurisprudence, the NPS rule is intended to protect the natural and cultural resources of the National Park System and to protect visitors and property within the parks by imposing on these activities only the most limited restrictions necessary to accomplish those goals.

#### Rule Analysis

##### *Narrowing the Definition of a Demonstration at 36 CFR 2.51*

In the first phase of the *Boardley v. Department of the Interior* litigation, the District Court held that, because 36 CFR 2.51(a)'s phrase "public expression of views" could apply to visitors just wearing baseball caps, T-shirts or tattoos, it was not narrowly tailored, overbroad, and impermissibly vague. The District Court also indicated that the Director's memorandum dated October 24, 2007, that further defined the phrase, could pose a problem as to the scope of the agency's discretion.

*Boardley v. Department of the Interior* 605 F.Supp.2d 8, 15–16 (D.D.C. 2009).

The NPS has not applied its regulations in an impermissible manner, nor does it have any interest in applying them in an impermissible way. Accordingly the NPS did not appeal the District Court's decision. Instead, the NPS issued a clarifying memorandum dated August 3, 2009, that directed that the terms "public expressions of views" under 36 CFR 2.51 and "demonstrations" under 36 CFR 7.96(g), which have traditionally been used interchangeably, shall both be considered to mean "public assemblies, meetings, gatherings, demonstrations, picketing, speechmaking, marching, holding vigils or religious services engaged in by one or more persons, the conduct of which has the effect or propensity to draw a crowd or onlookers." The memorandum also directed that the terms "do not apply to casual park use by visitors or tourists which does not have an intent or propensity to attract a crowd or onlookers."

Consistent with the District Court's decision regarding what constitutes a demonstration, and the NPS memorandum dated August 3, 2009, this rule more narrowly limits the definition of a demonstration, and makes explicit that the term includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services and all other like forms of conduct which involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to draw a crowd or onlookers. This rule at 36 CFR 2.51(a) also makes explicit that the term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers. This language is similar to the definition of a demonstration in the special regulations for the NPS's National Capital Region, 36 CFR 7.96(g)(1)(i), which has been in effect since 1983 and has been implemented without difficulty.

Application of the NPS's narrowed definition of a demonstration thus excludes visitors who merely have tattoos or are wearing baseball caps, T-shirts, or other articles of clothing that convey a message; or visitors whose vehicles merely display bumper stickers. By limiting the definition of what constitutes a demonstration, and by explicitly excluding casual park use by visitors or tourists which is not reasonably likely to attract a crowd or onlookers—such as when scout leaders or teachers engage in discussions with

their charges—the NPS believes that the rule comports with the First Amendment and is narrowly tailored to serve significant government interests. Finally, since such demonstrations involve personal expressive activity, and parks are not mere billboard venues, unattended signage or displays continue not to be allowed.

#### *Creating a Small Group Permit Exception at 36 CFR 2.51 and 2.52*

In its *Boardley* decision, the Court of Appeals held that the NPS regulations properly were content neutral and did not vest government officials with overly broad discretion, and that a three to ten day deadline for a government official to act on an application was reasonable. However, it held the regulations unconstitutional because they lacked a small group permit exception, on a system-wide basis.

Equally important, the Court of Appeals recognized that the NPS had valid and substantial interests in protecting parks' natural and cultural resources, protecting park facilities from damage, avoiding overcrowding of park locations, minimizing interference with park activities, and preserving peace and tranquility in parks. *Boardley v. Department of the Interior*, 2010 U.S. App. LEXIS 16302 \*26–27 (DC Cir. August 6, 2010).

Focusing on the "free speech areas" designated by parks under 36 CFR 2.51(e) and 2.52(e), the Court of Appeals determined that the NPS regulations' application to small groups and the lone individual was not sufficiently "narrowly tailored," because most individuals and small groups who engage in free speech do not pose problems, and because the NPS regulations did not leave open ample alternatives for communication. The Court of Appeals suggested that there were other means of achieving its interests, such as promulgating separate regulations for different types of national parks, or prohibiting certain types of public conduct, or drafting distinct regulations for different types of park areas such as wilderness, visitor centers, and parking lots.

The Court of Appeals stated that "it is the prerogative of the agency (or Congress) to decide whether to rewrite the regulations to apply only to large groups, and to decide where to draw that line." *Boardley v. Department of the Interior*, 2010 U.S. App. LEXIS 16302 \*42–43 (DC Cir. August 6, 2010). Given the NPS's statutory obligations and its important responsibilities to protect and properly manage park resources and protect park visitors, the NPS believes that it is necessary to have regulations

that govern demonstrations and the sale or distribution of printed matter. But, consistent with the Court of Appeals' decision as to small groups, the NPS has written this rule so that permits are generally required only of groups that involve more than 25 people. The NPS believes that creating a permit exception for groups of 25 or fewer people engaging in demonstrations or the sale or distribution of printed matter in NPS-designated available areas is reasonable. This is identical to the small group permit exception for groups of 25 or fewer people that has been contained in the NPS's special regulations for the National Capital Region at 36 CFR 7.96(g)(2)(i) since 1983.

Accordingly, under this rule at 36 CFR 2.51(b)(1) and 2.52(b)(1), demonstrations and the sale or the distribution of printed matter by 25 or fewer persons may be conducted without a permit in the available areas designated at 36 CFR 2.51(c).

Pursuant to this rule at 36 CFR 2.51(b)(1)(i)–(ii) and 2.52(b)(1)(i)–(ii), this small group permit exception is contingent upon the other conditions required for the issuance of a permit being met: the group must not be merely an extension of another group already availing itself of the 25-person maximum; and the activity must not unreasonably interfere with other demonstrations, special events, or NPS program activities. This, too, is similar to the NPS's special regulations for the National Capital Region at 36 CFR 7.96(g)(2)(i).

For individuals and small groups who take advantage of the permit exception, this rule provides at 36 CFR 2.51(b)(1)(iii) and 36 CFR 2.52(b)(1)(iii) that their activities may include the use of hand-carried signs, but not stages, platforms, or structures. Small groups have a myriad of other ways to communicate their views, such as discussions, speeches, leaflets, and hand-carried signs. The NPS believes that the unregulated presence of stages, platforms, and structures would negatively impact park resources and park visitors. In those situations, the NPS will continue to require a permit, which allows the park superintendent to consider and assess the nature of the proposed equipment and allows the park to impose content neutral, site-specific and reasonably appropriate park resource and safety conditions.

This rule at 2.51(b)(1)(iv) and 2.52(b)(1)(iv) also requests that the organizer submit reasonable advance notice of the proposed event to the park superintendent, including whether the organizer has reason to believe there may be an attempt to disrupt, protest, or

prevent the event. The advance notice provision is intended to afford at least some opportunity for the park to consider whether additional special public safety and resource protection measures may be needed. Failure to provide advance notice is *not* grounds to prohibit the activity. Advance notice is not a substitute for actual physical presence or a permit, and does not reserve a particular designated area for the organizer. The NPS requests comments as to whether such notice should be made mandatory in future regulations.

Because some park units' designated available areas may be too small to physically accommodate 25 persons, the NPS rule at 36 CFR 2.51(b)(3) and 2.52(b)(3), provides that a park may reduce the 25-person maximum for the small group permit exception for a designated area. This may occur, however, only if a 25-person group cannot be reasonably physically accommodated in the designated area and only if approved by the regional director in writing, which shall be made available at the superintendent's office and by public notice under 36 CFR 1.7.

We also expect that some designated available areas, such as those near a park visitor center, may be very sought-after venues that more than one group may seek to use at the same time. In order to ensure public safety and provide a fair and content-neutral accommodation to such groups, the NPS rule at 36 CFR 2.51(b)(4) and 2.52(b)(4) provides that if two (or more) groups taking advantage of the small group permit exception seek the same designated area at the same time, and the area cannot reasonably accommodate both groups, the park will, whenever possible, direct the later-arriving group to relocate to another nearby available designated area. As discussed above, advance notice will not give a later-arriving group priority over an earlier-arriving group. The rule thus gives activities under permit a preferred right to the designated area, and if the area cannot accommodate two activities, the groups availing themselves of the small group permit exception will, whenever possible, be relocated to a nearby available designated area. For this reason, persons or groups that would otherwise qualify for this exception may wish to apply for and receive a permit in order to ensure that they have priority for use of the designated area.

The NPS's ability to consider the physical dimensions of the designated available areas as well as the safety of the small group and other park visitors is important, especially in the event of

a disruptive counter-demonstration. NPS may consider a threat of violence as a permissible ground for a time, place, and manner limitation. "When the choice is between an abbreviated march or a bloodbath, government must have some leeway to make adjustments necessary for the protection of participants, innocent onlookers, and others in the vicinity." *Christian Knights of the Ku Klux Klan Invisible Empire, Inc. v. District of Columbia*, 972 F.2d 365, 374 (DC Cir. 1992).

#### Other Changes in the NPS Rule

This rule at 36 CFR 2.51(d) and 2.52(c) incorporates the various application questions found in the earlier 2.51(b) and 2.52(b), with one additional provision: The application will also ask whether there is any reason to believe that there will be an attempt to disrupt, protest, or prevent the event. Such application information is critical in helping the NPS to assess the need for additional public safety measures as it attempts to facilitate the applicant's activity. It has been a standard question asked in NPS Application Form 10-930 for many years, and the NPS wants to make explicit the importance of obtaining this information.

The rule also provides that applications should not be submitted and will not be accepted more than one year before the proposed event (including set-up time), and that applications submitted earlier will be returned. This is consistent with long-standing NPS administrative practice. As detailed in 73 FR 46217 (2008), this one year time frame allows applicants to be better able to determine the proposed activity's true size and scope, and allows the NPS to be better able to determine whether it can be reasonably accommodated, while also allowing a fair and equal opportunity to use parkland.

This rule has been simplified, with various cross-indexing and subheading captions, so that it may be more understandable. For example, the rule at 36 CFR 2.51(h) and 2.52(g) standardizes the maximum duration of a permit to 14 consecutive days, a change from just 7 days in the prior 36 CFR 2.51(g), but consistent with the prior 36 CFR 2.52(g). The rule still allows a permit to be extended upon submission of a new application.

This rule at 36 CFR 2.51(c)(1)(i)-(v) also consolidates the regulatory criteria earlier found at 2.51(e)(1)-(5) and 2.52(e)(1)-(5), governing when the NPS may determine an area is available for demonstrations and the sale or distribution of printed matter. Parks that

2.50 should consider those special event areas to also be available for demonstrations and the sale and distribution of printed matter.

This rule at 36 CFR 2.51(c)(1)(vi) also creates one additional regulatory criterion for the NPS to consider in deciding which areas to designate as available for demonstrations and the sale or distribution of printed matter: Whether such activities would be incompatible with the nature and traditional use of the particular park area involved. This additional factor is consistent with the Court of Appeals decision in *Boardley*, which stated that:

Presumably, many national parks include areas—even large areas, such as a vast wilderness preserve—which never have been dedicated to free expression and public assembly, would be clearly incompatible with such use, and would therefore be classified as nonpublic forums. But at the same time, many national parks undoubtedly include areas that meet the definition of traditional public forums.

*Boardley v. Department of the Interior*, 2010 U.S. App. LEXIS 16302 \*12-13 (DC Cir. August 6, 2010) (citations omitted). While traditional public forums may exist in some parks, by designating certain areas as available for demonstrations and the sale or distribution of printed matter, NPS does not intend to define those designated available areas as public forums for purposes of First Amendment analysis.

This rule at 36 CFR 2.52(a) also defines what constitutes "printed matter." This definition simply codifies, with minor modifications, a definition already provided in the preamble to the 1983 final regulation. 48 FR 30272 (June 30, 1983).

This rule, at 36 CFR 2.51(e) and 2.52(d), also directs that the superintendent shall issue a permit within ten days of receipt of a fully executed application that includes all of the requested information and is submitted within one year of the proposed event. The text of the earlier NPS regulations required park action "without unreasonable delay," which the NPS later modified to two business days following another Circuit's decision. However, the Court of Appeals in *Boardley* found that the other Circuit's decision was no longer persuasive due to a subsequent Supreme Court decision, and that "it had no trouble finding deadlines between three and ten days to be reasonable." *Boardley v. Department of the Interior*, 2010 U.S. App. LEXIS 16302 \*23 (DC Cir. August 6, 2010).

**Harassment and Obstruction**

This rule, at 36 CFR 2.31(a)(4)–(5), also creates two additional public conduct regulations that prohibit harassment and obstruction. The harassment of park visitors with physical contact was earlier prohibited at 36 CFR 2.52(h), and the NPS believes that such public conduct regulations are critical to help protect park resources, programs, and visitors. These regulations are also consistent with the Court of Appeals decision in *Boardley*, which recognized that the government could achieve its legitimate interests by narrowly tailored public conduct regulations: “Instead of subjecting individuals and small groups to a prior restraint on speech, the NPS could simply prohibit and punish conduct that harasses park visitors, interferes with official programs, or creates security or accessibility hazards.” *Boardley*, 2010 U.S. App. LEXIS 16302 at \*40 (DC Cir. August 6, 2010).

**Compliance With Other Laws, Executive Orders, and Department Policy****Effective Date**

Pursuant to 5 U.S.C. 553(d)(3) and 318 DM 4.7 B(1)(ii), this rule is effective immediately, so that, following the issuance of the mandate by the Court of Appeals in *Boardley*, the NPS may continue to perform its duties under the NPS Organic Act, consistent with the First Amendment, by properly managing federal parkland while allowing activities associated with demonstrations and the sale and distribution of printed matter.

**Regulatory Planning and Review (Executive Order 12866)**

This document is a significant rule and the Office of Management and Budget has reviewed this rule under Executive Order 12866. This rule:

(1) Will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule only affects management and operations of National Park Service areas outside the National Capital Region.

(3) Does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) Does raise novel legal or policy issues. The rule modifies existing NPS regulations to be consistent with recent federal court decisions.

**Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

The rule expands opportunities for individuals and organizations to engage in small group demonstrations and the sale or distribution of printed matter for which no permit need be issued. Other organizations with interest in the rule will not be effected economically.

**Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804 (2))**

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.)**

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

**Takings (Executive Order 12630)**

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. It pertains specifically to operation and management of locations outside the NPS–National Capital Region. A takings implication assessment is not required.

**Federalism (Executive Order 13132)**

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of summary impact statement. A Federalism summary impact statement is not required.

**Civil Justice Reform (Executive Order 12988)**

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

**Consultation With Indian tribes (Executive Order 13175)**

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. The rule only applies to management and operation of NPS areas outside the National Capital Region.

**Paperwork Reduction Act**

The Office of Management and Budget has approved the information collections in this rule and has assigned control number 1024–0026 expiring on June 30, 2013. The information collection activities are necessary for the public to obtain benefits in the form of special park use permits.

**National Environmental Policy Act of 1969**

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. It is a modification of existing NPS regulations as required by a decision of the Court of Appeals. Moreover, a detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined that the proposed rule is categorically excluded under 516 DM 12.5(A)(10) as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it. Further, the rule will not result in the introduction of incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it. Finally, the rule will not cause conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants.

We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

**Information Quality Act (Pub. L. 106-554)**

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act.

**Effects on the Energy Supply (Executive Order 13211)**

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

**Clarity of This Regulation**

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To help us better revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**Public Participation**

Pursuant to 5 U.S.C. 553, good cause exists both to publish this interim rule without prior public notice and comment and for this rule to become effective immediately, following the issuance of the mandate by the Court of Appeals in *Boardley v. Department of the Interior*. This allows the NPS to continue to perform its duties under the NPS Organic Act, consistent with the First Amendment: to properly manage federal parkland while allowing activities associated with demonstrations and the sale and distribution of printed matter. As explained above, the Court of Appeals found that the rules at 2.51 and 2.52 were unconstitutional in their entirety. Thus, to ensure that no regulatory vacuum exists, it is necessary to promulgate these rules without advance notice and comment, and it would be impracticable and contrary to the public interest to delay their effective date. And as explained above, these changes adopt some provisions already included

within the special regulations for the NPS's National Capital Region, which were the result of notice and comment rulemakings. Although the interim rule is effective immediately, NPS still requests public comments on this rule. Comments will be accepted for 60 days. NPS will review all comments received, and at the conclusion of the comment period will determine whether revisions to this interim rule are warranted.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> and enter "1024-ADXX" in the "Keyword or ID" search box.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 36 CFR Part 2**

Environmental protection, National parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 2 as set forth below:

**PART 2—RESOURCE PROTECTION, PUBLIC USE AND RECREATION**

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k).

■ 2. In § 2.31 add paragraphs (a)(4) and (a)(5), to read as follows:

**§ 2.31 Trespassing, tampering, vandalism, harassment, obstruction.**

(a) \* \* \*

(4) *Harassment.* Intentional or reckless harassment of park visitors with physical contact.

(5) *Obstruction.* Intentional or reckless obstruction of any sidewalk, trail, highway, building entranceway, railroad track, or public utility right-of-way, or other public passage, whether alone or with others. The mere gathering of persons to hear a speaker communicate, or simply being a

member of such a gathering, does not constitute obstruction. An official may make a reasonable request or order that one or more persons move in order to prevent obstruction of a public passage, and refusal of such an order constitutes obstruction.

\* \* \* \* \*

■ 3. Section 2.51 is revised to read as follows:

**§ 2.51 Demonstrations.**

(a) *Demonstrations.* The term "demonstrations" includes demonstrations, picketing, speechmaking, marching, holding vigils or religious services, and all other like forms of conduct that involve the communication or expression of views or grievances, engaged in by one or more persons, the conduct of which is reasonably likely to attract a crowd or onlookers. This term does not include casual park use by visitors or tourists that is not reasonably likely to attract a crowd or onlookers.

(b) *Permits and the small group permit exception.* Demonstrations are allowed within park areas designated as available under paragraph (c)(2) of this section, when the superintendent has issued a permit for the activity, except that:

(1) Demonstrations involving 25 persons or fewer may be held without a permit within designated park areas, provided that:

(i) None of the reasons for denying a permit that are set out in paragraph (f) of this section are present;

(ii) The group is not merely an extension of another group already availing itself of the small group permit exception under this provision;

(iii) They will not unreasonably interfere with other permitted demonstrations and special events, or park program activities; and

(iv) Hand-carried signs may be used, but stages, platforms, or structures may not be used.

(2) While it is not mandatory, the organizer is requested to provide reasonable notice of the proposed event to the park superintendent, including whether there is any reason to believe that there may be an attempt to disrupt, protest, or prevent the activity.

(3) The 25-person maximum for the small group permit exception may be reduced for a designated available area, but only if:

(i) A written determination that a 25-person group cannot be reasonably physically accommodated within that area is approved by the regional director; and

(ii) The written determination is made available at the office of the

superintendent and by public notice under § 1.7 of this chapter.

(4) In the event that two or more groups taking advantage of the small group permit exception seek to use the same designated available area at the same time, and the area cannot reasonably accommodate multiple occupancy, the superintendent will, whenever possible, direct the later-arriving group to relocate to another nearby designated available area.

(c) *Designated available park areas.*

(1) Locations may be designated as available for demonstrations under this section, and for the sale or distribution of printed matter under § 2.52, only if these activities would not:

- (i) Cause injury or damage to park resources;
- (ii) Unreasonably impair the atmosphere of peace and tranquility maintained in wilderness, natural, historic, or commemorative zones;
- (iii) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the National Park Service;
- (iv) Substantially impair the operation of public use facilities or services of National Park Service concessioners, holders of commercial use authorizations, or contractors;
- (v) Present a clear and present danger to the public health and safety; or
- (vi) Be incompatible with the nature and traditional use of the particular park area involved.

(2) The superintendent must designate on a map, which must be available in the office of the superintendent and by public notice under § 1.7 of this chapter, the locations designated as available for demonstrations and the sale or distribution of printed matter.

(d) *Application for permit.* A permit application must provide:

- (1) The name of the applicant or the name of the organization (if any);
- (2) The date, time, duration, nature, and place of the proposed event;
- (3) An estimate of the number of persons expected to attend;
- (4) A statement of equipment and facilities to be used;
- (5) Whether there is any reason to believe that there will be an attempt to disrupt, protest, or prevent the event; and
- (6) Any other information required by the permit application form.

(e) The superintendent must not accept an application more than one year before the proposed event (including time required for set-up); applications received more than a year in advance will be returned to the applicant.

(f) *Processing the application.* The superintendent must issue a permit within ten days of receiving a complete and fully executed application unless:

(1) The superintendent has granted or will grant a prior application for a permit for the same time and place, and the activities authorized by that permit do not reasonably allow multiple occupancy of that particular area;

(2) It reasonably appears that the event will present a clear and present danger to public health or safety;

(3) The event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities;

(4) The location applied for has not been designated as available under paragraph (c)(2) of this section;

(5) The application was submitted more than one year before the proposed event (including set-up); or

(6) The activity would constitute a violation of an applicable law or regulation.

(g) *Written denial of permit.* If a permit is denied, the superintendent will inform the applicant in writing of the denial and the reasons for it.

(h) *Permit conditions.* The permit may contain conditions reasonably consistent with the requirements of public health and safety, protection of park resources, and the use of the park area for the purposes for which it was established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

(i) *Permit duration.* (1) Permits may be issued for a maximum of 14 consecutive days.

(2) A permit may be extended for up to 14 days, but a new application must be submitted for each extension requested.

(3) The extension may be denied if another applicant has requested use of the same location and the location cannot reasonably accommodate multiple occupancy.

(j) *Violation prohibited.* Violation of these regulations or the terms of the permit is prohibited.

(k) *Permit revocation, termination of small group exception.* (1) The superintendent may revoke a permit for any violation of its terms and conditions.

(2) The superintendent may revoke a permit, or order a small group permit exception activity to cease, when any of

the conditions listed in paragraph (f) of this section exist.

(3) The superintendent will make the revocation or order to cease in writing, with the reasons clearly set forth. In emergency circumstances the superintendent will make an immediate verbal revocation or order to cease, followed by written confirmation within 72 hours.

■ 4. Section 2.52 is revised to read as follows:

**§ 2.52 Sale or distribution of printed matter.**

(a) *Printed Matter.* The term "printed matter" means message-bearing textual printed material such as books, pamphlets, magazines, and leaflets, provided that it is not solely commercial advertising.

(b) *Permits and the small group permit exception.* The sale or distribution of printed matter is allowed within park areas designated as available under § 2.51(c)(2) when the superintendent has issued a permit for the activity, except that:

(1) Sale or distribution activity by 25 persons or fewer may be conducted without a permit within designated park areas, provided that:

(i) None of the reasons for denying a permit that are set out in paragraph (e) of this section are present; and

(ii) The group is not merely an extension of another group already availing itself of the small group permit exception under this provision;

(iii) The sale or distribution will not unreasonably interfere with other permitted demonstrations and special events, or program activities; and

(iv) Hand-carried signs may be used, but stages, platforms, or structures may not be used.

(2) While it is not mandatory, the organizer is requested to provide reasonable notice of the proposed event to the park superintendent, including whether there is any reason to believe that there may be an attempt to disrupt, protest, or prevent the activity.

(3) The 25-person maximum for the small group permit exception may be reduced for a designated available area, but only if:

(i) A written determination that a 25-person group cannot be reasonably physically accommodated within that area is approved by the regional director; and

(ii) The written determination is made available at the office of the superintendent and by public notice under § 1.7 of this chapter.

(4) In the event that two or more groups taking advantage of the small-group permit exception seek the same

designated available area at the same time, and the area cannot reasonably accommodate multiple occupancy, the superintendent will, whenever possible, direct the later-arriving group to relocate to another nearby designated available area.

(c) *Application for permit.* An application must provide:

(1) The name of the applicant or the name of the organization (if any);

(2) The date, time, duration, nature, and place of the proposed event;

(3) An estimate of the number of persons expected to attend;

(4) A statement of equipment and facilities to be used;

(5) Whether there is any reason to believe that there will be an attempt to disrupt, protest, or prevent the event; and

(6) Any other information required by the permit application form.

(d) The superintendent must not accept an application more than one year before the proposed event (including time required for set-up); applications received more than a year in advance will be returned to the applicant.

(e) *Processing the application.* The superintendent must issue a permit within ten days of receiving a complete and fully executed application unless:

(1) The superintendent has granted or will grant a prior application for a permit for the same time and place, and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area;

(2) It reasonably appears that the sale or distribution will present a clear and present danger to the public health and safety;

(3) The number of persons engaged in the sale or distribution exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities;

(4) The location applied for has not been designated as available under § 2.51(c)(2);

(5) The application was submitted more than one year before the proposed event (including set-up); or

(6) The activity would constitute a violation of an applicable law or regulation.

(f) *Written denial of permit.* If a permit is denied, the superintendent will inform the applicant in writing of the denial and the reasons for it.

(g) *Permit conditions.* The permit may contain conditions reasonably

consistent with the requirements of public health and safety, protection of park resources, and the use of the park area for the purposes for which it was established.

(h) *Permit duration.* (1) Permits may be issued for a maximum of 14 consecutive days.

(2) A permit may be extended for up to 14 days, but a new application must be submitted for each extension requested.

(3) The extension may be denied if another applicant has requested use of the same location and the location cannot reasonably accommodate multiple occupancy.

(i) *Misrepresentation.* It is prohibited for persons engaged in the sale or distribution of printed matter under this section to misrepresent the purposes or affiliations of those engaged in the sale or distribution, or to misrepresent whether the printed matter is available without cost or donation.

(j) *Violation prohibited.* Violation of these regulations or the terms of the permit is prohibited.

(k) *Permit revocation, termination of small group exception.* (1) The superintendent may revoke a permit for any violation of its terms and conditions.

(2) The superintendent may revoke a permit, or order a small group permit exception activity to cease, when any of the conditions listed in paragraph (e) of this section exist.

(3) The superintendent will make the revocation or order to cease in writing, with the reasons clearly set forth. In emergency circumstances the superintendent will make an immediate verbal revocation or order to cease, followed by written confirmation within 72 hours.

Dated: October 1, 2010.

**Will Shafroth,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010-26392 Filed 10-15-10; 4:15 pm]

**BILLING CODE 4312-52-P**

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R05-OAR-2007-0587; EPA-R05-OAR-2009-0732; FRL-9205-8]**

### **Approval of Implementation Plans of Wisconsin: Nitrogen Oxides Reasonably Available Control Technology**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) submitted on June 12, 2007 and on September 14, 2009. These revisions incorporate provisions related to the implementation of nitrogen oxides (NO<sub>x</sub>) Reasonably Available Control Technology (RACT) for major sources in the Milwaukee-Racine and Sheboygan County ozone nonattainment areas. EPA is approving SIP revisions that address the NO<sub>x</sub> RACT requirements found in the Clean Air Act (CAA). EPA is also approving other miscellaneous rule changes that affect NO<sub>x</sub> regulations that were previously adopted and approved into the SIP.

**DATES:** This final rule is effective November 18, 2010.

**ADDRESSES:** EPA has established the following dockets for this action: Docket ID Nos. EPA-R05-OAR-2007-0587 and EPA-R05-OAR-2009-0732. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays. We recommend that you telephone Douglas Aburano, Environmental Engineer, at (312) 353-6960, before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Aburano, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6960, [aburano.douglas@epa.gov](mailto:aburano.douglas@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

**Table of Contents**

- I. What is the background for this rule?
- II. What comments did we receive on the proposed rule?